

September 15, 2009



TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Phil Andrews, President

Councilmember Roger Berliner

Councilmember Valerie Ervin

Councilmember Michael Knapp

Councilmember Nancy Navarro

Councilmember Marc Elrich

Councilmember Nancy Floreen

Councilmember George Leventhal

Councilmember Duchy Trachtenberg



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1 COUNCIL PRESIDENT ANDREWS:

2 Good morning, everybody, and welcome to a meeting of the County Council, our first
3 session back from the summer recess. We have an extremely busy fall ahead, which
4 you'll hear about as we go through, but we're going to start with an invocation from Pastor
5 Jan P. Lookingbill of the Emmanuel Lutheran Church in Bethesda. Pastor Lookingbill,
6 thank you for joining us again. You were here with us in July. Please join me in standing
7 for the invocation.

8
9 JAN LOOKINGBILL:

10 O Lord, the earth is yours, and the fullness thereof, and we are recipients of the beauty
11 and of the bounty that you have placed into our hands, and so we pause this morning to
12 give thanks for all that we have and all that we see. We also pause to give thanks for
13 these eight years since September 11th when this Council was gathered together and
14 great evil was perpetrated on a foreign city from us but a very near city to all of us. We
15 give you thanks, heavenly father, for the recovery that has been made from some of the
16 dangers that have been seen there, but we also pray, with Thanksgiving, that you will
17 continue to guide us with vision and understanding the gifts of life and the resources that
18 we have in this beautiful County. The earth is yours, heavenly father, and into this County
19 you have placed great resources -- our children and our teachers, our roads, the
20 transportation, the research, the great gifts of creativity, and the members of and citizens
21 of this County. We give you thanks, heavenly father, for watching over all and for giving us
22 the ability to be able to see more plainly what it is that we should do. In this hearing hall,
23 heavenly father, help us to hear one another. In this conference room, help us to confer
24 with one another, that justice and mercy may be part of what we experience and what we
25 share in this County. Bless our leaders, those on this County Council, those who come to
26 present ideas and innovations. Help us, heavenly father, to hear and to work together for
27 justice and peace among your people. This we pray in your holy name. Amen.

28
29 COUNCIL PRESIDENT ANDREWS:

30 Thank you, Pastor Lookingbill. We'll now go on to general business. Actually, we actually
31 will now have a presentation, which is a proclamation for the National Alcohol and Drug
32 Addiction Recovery Month by Councilmember Trachtenberg.

33
34 COUNCILMEMBER TRACHTENBERG:

35 I am delighted to be here this morning to make this recognition and to really highlight what
36 I would consider to be a really significant celebration in this community, to basically
37 proclaim this month Drug Awareness Month. It is a national celebration, and I'm going to
38 be joined by a number of people here this morning -- and again, many of them friends and
39 colleagues that I've worked with in the drug treatment community. Tricia Sullivan from the
40 Alcohol and Drug Advisory Council is joining me, as well as a number of people from our
41 Avery Road Combined Care Program. I believe Laura Winton is here, Dwayne Love,

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1 Nicole Wang, Dee Neff, Sheila Waters, and Robin Burns. And I also have a very long list
2 of clients that I'd like to have come up and join us here as well for the presentation. Again,
3 for disclosure purposes, they've given their permission to have their names read and to be
4 part of the photograph that's taken. And I'm going to recognize Glenn, Pierre, Cathy,
5 Denise, Eulanda, John, Thomas, Lily, Desiree, Tim, Kelly, and Sherri. As I said, I'm
6 delighted to be here to make this presentation this morning. You know, recovery is a
7 journey, a journey of a lifetime, and it really does take a village and a community, and
8 clearly this is a statement that the Council and County government support you in your
9 recovery. And I'm going to share some words that I've often shared at recovery events. I
10 saw these words on a program at a recovery conference down in Florida many years ago,
11 and they spoke to me then, and they still do. They're words that were used by Winston
12 Churchill back in 1944 when Britain was under siege, and they are that success is not
13 final, failure is not inevitable, it's not fatal, that it's the courage to continue that really
14 counts. So remember that today as we celebrate Recovery Month. I'm going to read the
15 proclamation, and I'm going to ask Pat and Laura if you'd like to make some brief
16 comments after I read this for you, and I know our trusty photographer, Mr. Greenberger,
17 is going to want to take some group pictures, so... "The County Council of Montgomery
18 County, Maryland: whereas, alcohol and drug addictions have devastating health and
19 societal consequences, and Marylanders are certainly not immune to these serious health
20 problems; and whereas, 23.2 million people aged 12 or older in the U.S. needed treatment
21 for a substance use disorder in 2007, and 5.4 million adults also suffered from a
22 concurrent mental illness; and whereas, valuable resources exist online and in our
23 community to increase people awareness about how substance use disorders affect
24 children, families, and our society; and whereas, such awareness and education is
25 essential to overcoming misconceptions, eliminating the harmful effects of stigma, and
26 achieving long-term recovery; and whereas, National Alcohol and Drug Addiction
27 Recovery Month provides an opportunity to highlight the benefits of treatment and
28 encourage people with drug and alcohol abuse issues to begin their journey and recovery,
29 journey that leads to sobriety, productivity, and much hope and fulfillment; and whereas,
30 National Alcohol and Drug Addiction Recovery Month aims to promote the societal
31 benefits of alcohol and drug use disorder treatment, laud the contributions of treatment
32 providers, such as Avery Road Combined Care, and the work of the Alcohol and Other
33 Drug Advisory Council and promote the message that recovery from alcohol and drug use
34 disorders, in all its forms, is possible; now, therefore, be it resolved that the County
35 Council of Montgomery County, Maryland, hereby proclaims the month of September
36 2009 as National Alcohol and Drug Addiction Recovery Month in Montgomery County and
37 calls upon the people of this County to observe this month -- celebrate it -- with
38 appropriate programs, activities, and ceremonies supporting this year's theme, Join the
39 Voices for Recovery:
40 Together We Learn, Together We Heal." Signed on this 15th day of September in the year
41 2009, Phil Andrews, Council President. So congratulations. [PAUSE] Laura.

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1
2 LAURA WINTON:

3 Yes. I'd like to thank everybody, especially the City Council, for giving us the opportunity
4 to provide this program in Montgomery County. It's an extraordinary program. We are a
5 co-occurring program, long-term -- six months to a year -- which is unique throughout this
6 country, and the dedication that Duchy and the Council have given by providing us the
7 funding to help as many people as we have throughout the last two, almost three years
8 that Resources for Human Development has been running this program. We must really
9 give you thanks, and I'm sure that all the staff and clients here join me in saying thank you
10 from the bottom of our heart.

11
12 PAT SULLIVAN:

13 Thank you. [PAUSE] Good morning, everybody. My name is Pat Sullivan, and I am the
14 vice chair of the Alcohol and Drug Advisory Council, and these are the heroes. These are
15 the heroes of the moment. I also have the distinct honor of being on Avery Road's
16 Advisory Board, so I truly know what these people do and how hard the people at Avery
17 Road work every single day to make -- to make people's lives better, and their success
18 stories are legion, and I truly am proud to be a part of all that you do, and thank you for
19 allowing me to do that.

20
21 COUNCILMEMBER TRACHTENBERG:

22 Thank all of you.

23
24 COUNCIL PRESIDENT ANDREWS:

25 Thank you, Councilmember Trachtenberg, for doing the honors, and thank you to all those
26 who are working for recovery from alcohol and drug abuse. Congratulations to all those
27 working to work through the -- their addiction. We'll now move on to general business and
28 announcement of agenda and calendar changes. Miss Lauer.

29
30 LINDA LAUER:

31 Morning. The first item is the Council is ready to announce its public hearing on the White
32 Flint Sector Plan, to be held on October 20 at 7:30 P.M. For today, there's a change on
33 Item D on the Consent Calendar. We're just explaining further what's before you. It's -- in
34 addition to the transfer of \$7.7 million for the schools' operating budget, it also includes a
35 transfer of \$1.2 million in grant funds. In the District Council session, the introduction of
36 the Zoning Text Amendment on the Commercial-Residential (CR) Zone, that introduction
37 is deferred till next week. And the last item is the worksession planned for this morning on
38 the I-270 Corridor Cities Transitway -- that has been pulled from the agenda today and will
39 be rescheduled.

40
41 COUNCIL PRESIDENT ANDREWS:

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1 Yes. We've pulled -- I pulled that from the agenda because we are still awaiting the
2 response from the state to our questions that I submitted on behalf of the Council in early
3 August about the proposal, and I look forward to receiving those responses as soon as
4 the state feels they're ready to send them, and then we'll schedule a worksession and a
5 voting session shortly after that, so we hope to receive them soon.

6
7 LINDA LAUER:

8 And we did receive one petition this week, and it's one supporting amendments to the
9 Zoning Text Amendment on home occupations and residential off-street parking. Thank
10 you.

11
12 COUNCIL PRESIDENT ANDREWS:

13 OK. Thank you, Miss Lauer. All right. Next is action on approval of the minutes of July 21,
14 2009. Is there a motion for approval?

15
16 COUNCILMEMBER ERVIN:

17 So moved.

18
19 COUNCILMEMBER KNAPP:

20 Second.

21
22 COUNCIL PRESIDENT ANDREWS:

23 Moved by Councilmember Ervin. Seconded by Councilmember Knapp. All those in favor
24 of the approval of the minutes of July 21, 2009, please raise your hand. And that is
25 unanimous among all nine Councilmembers.

26
27 COUNCILMEMBER FLOREEN:

28 What a good beginning, Mr. President.

29
30 COUNCIL PRESIDENT ANDREWS:

31 Very good. All right. It's easier for all.

32
33 COUNCILMEMBER KNAPP:

34 Mr. President.

35
36 COUNCIL PRESIDENT ANDREWS:

37 Yes.

38
39 COUNCILMEMBER KNAPP:

40 I have a general business --
41

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1 COUNCIL PRESIDENT ANDREWS:

2 Yes. Councilmember Knapp.

4 COUNCILMEMBER KNAPP:

5 Thank you. I just -- we're meeting with the Planning Board for lunch next Tuesday, and
6 there has been a back and forth over the course of the last couple weeks, given the
7 Council's full schedule, on various land-use issues and Master Plans. The Planning Board
8 is proceeding to move ahead on a series of additional Master Plans, with the expectation
9 that we're going to somehow miraculously make time. And so what I need to get from
10 Councilmembers are their perspectives as to specific Master Plans because when the
11 Planning Board chair calls me and says, "Here's what we're doing, because I've talked to
12 all these Councilmembers," it always comes back with a little bit different story every time
13 we talk. And so I just need to put that out for Councilmembers that over the course of the
14 next couple days, I need to get your perspective on a couple of the Master Plans in your
15 specific district so I can make sure that when we get to next Tuesday, I can consult with
16 you and make sure that we're presenting the Planning Board with a united perspective on
17 the part of the Council.

19 COUNCIL PRESIDENT ANDREWS:

20 Good idea.

22 COUNCILMEMBER KNAPP:

23 Thank you.

25 COUNCIL PRESIDENT ANDREWS:

26 All right. I encourage all Councilmembers to speak with the chair of the PHED Committee
27 in the next couple of days about their views on the Master Plan schedule for the next year
28 or two. Thank you. We'll now move on to the Consent Calendar. Is there a motion for
29 approval?
30
31

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1 COUNCIL VICE PRESIDENT BERLINER:

2 So moved.

3
4 COUNCIL PRESIDENT ANDREWS:

5 All right. Moved by Council Vice President Berliner. Seconded by Councilmember
6 Leventhal. Are there any comments on any of the Consent Calendar items? All right. I'll --
7 I see Councilmember Knapp.

8
9 COUNCILMEMBER KNAPP:

10 Thank you. I'll try not to be too talkative this morning. I just wanted to reiterate a point I
11 made upstairs in breakfast with the County Executive. There is an introduction on Item H
12 for \$150,000 for the Sligo Creek golf course. The PHED Committee is planning a -- at this
13 point, it is not necessarily a worksession on the 150,000 supplemental. It is a -- a broad-
14 based discussion on what are the alternatives and options available for resolution on the
15 issues associated with Sligo Creek golf course, and so to the extent that there are folks on
16 the Council, that there are folks in the community, that there are folks in the Executive
17 branch that have ideas or concepts that we should be considering, between now and the
18 24th would be a really good time to get them before the committee so we can make sure
19 that we get those in the mix of things that we're talking about. So I just wanted to make
20 sure that we get that out for folks to think about. In addition, on Item K, OLO Report 2010-
21 2, Succession Planning in Montgomery County Government and Public Schools, I just
22 want to -- which is being received and released today -- I just want to thank them for their
23 efforts. As I think most people are aware, there is a significant demographic shift
24 underway, not just in Montgomery County, but in the country, as the Baby Boom
25 generation ages and moves from the workforce -- although people are doing it now more
26 slowly, as the economy has changed -- we as local governments need to be thinking
27 about how do we do the right training, do the right management, to make sure that the
28 folks who are here can assume those responsibilities from the experienced, 30- 35-year
29 employees who will be leaving. And this is a great report that begins to talk about that and
30 help us think about it and see what steps we need to take to put in place now, to be
31 prepared over the course of the next 5-10 years to be able to continue to be successful as
32 County government. So I thank them very much for their efforts.

33
34 COUNCIL PRESIDENT ANDREWS:

35 Thank you, Councilmember Knapp. I join you in noting the excellent reports done by the
36 Office of Legislative Oversight. In fact, they've given us two that we're releasing today,
37 and the second one is Data on Transit-Related Crime in Montgomery County. There will
38 be a Public Safety Committee worksession on that in mid-October -- October 15 is
39 scheduled. So, the reports they prepare are always well done and thoughtful and contain
40 findings and recommendations that often shape our policy, and I commend those reports
41 to anybody interested in those subjects. All right. With that, I think we're ready to vote on

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1 the Consent Calendar. All those in favor, please raise your hand. And that is unanimous.
2 Thank you. Since the next item has been deferred, we're going to move now on to the
3 District Council session and Item 4, which is action -- consideration of the Hearing
4 Examiner's report and recommendation on application number G-878. We took this up, I
5 believe, the last week before we -- the last meeting, I think, before we recessed July 28,
6 and the Council at that time voted to direct staff to direct -- to prepare a Resolution of
7 Disapproval on the recommendation. So we have that in the packet, and I'm going to ask
8 Mr. Zyontz to lay out, since it has been a few weeks since we took this up, what are the
9 options, just generally, since we haven't had a lot of these cases recently. What are the
10 options before the Council?

11
12 JEFF ZYONTZ:

13 As this is the formal vote for the Council, the Council has all options on this amendment. It
14 can approve, it can remand, it can deny. Your -- your request was for a Resolution of
15 Denial. That is what you have in your packet. One of the rights of applicants is -- allowed
16 in the zoning ordinance is to withdraw at any time, but since the Council's action, the
17 applicant has requested a remand -- well, first of all, he, of course, requested approval of
18 the ZTA -- of the application as submitted, but also requested a remand. If you take up the
19 resolution and approve a Resolution to Deny, of course the case is done. It would bar an
20 application of the same zone for three years. It would bar an application in a similar family
21 of zones for -- for 18 months. If, in fact, you wish to remand, you need to know that before
22 you vote to approve or deny, which would be an absolute disposition of the case.

23
24 COUNCIL PRESIDENT ANDREWS:

25 Very good. Thank you. I think that's clear. And I'll ask if there are any motions on this item.

26
27 COUNCILMEMBER ELRICH:

28 I moved the resolution before us.

29
30 COUNCIL PRESIDENT ANDREWS:

31 OK. It's been moved. Is there a second?

32
33 COUNCIL VICE PRESIDENT BERLINER:

34 I do.

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1 COUNCIL PRESIDENT ANDREWS:

2 All right. It's been moved and seconded to support the resolution to disapprove the Local
3 Map Amendment G-878. Is there any discussion on the motion? Council Vice President
4 Berliner.

5
6 COUNCIL VICE PRESIDENT BERLINER:

7 I'd like to explore with staff the nature of the remand that would be contemplated if a
8 remand were to be considered by this Council.
9

10 JEFF ZYONTZ:

11 Although you have an application for an order of remand in the -- presented by the
12 applicant, I suspect if you remand, I would recommend that you would do it on a broad
13 basis to, number one, allow amendments to the application; number two, allow those
14 issues important to the community, such as compatibility, school capacity density, green
15 space and open area. So I would -- if you choose to remand, I would do it on a very broad
16 basis. I would recommend that.
17

18 COUNCIL VICE PRESIDENT BERLINER:

19 I guess the reason I raise it, it isn't clear to me that if it is remanded, that the issues that
20 the community is most concerned about can't be fixed, as opposed to barring the
21 applicant for three years from being able to do anything with respect to this. So the
22 Council has clearly expressed its view that that which was proposed was more than this
23 site or this community should be asked to bear. To the extent to which we can facilitate a
24 process whereby the applicant, hearing the Council's views with respect to this, is
25 prepared to modify its proposals in a manner that is consistent with this Council's
26 guidance and the community's expectations and the Hearing Examiner's
27 recommendation, that always seems to me to be a preferable way to go, unless we are so
28 clear in our judgment at this moment that no way, no how could anything work.
29

30 COUNCILMEMBER FLOREEN:

31 Is that a motion?
32

33 COUNCIL VICE PRESIDENT BERLINER:

34 So my alternative motion would be for a remand with respect to this.
35

36 COUNCILMEMBER FLOREEN:

37 Second.
38

39 COUNCIL PRESIDENT ANDREWS:

40 So this would be a substitute motion, I take it, which is allowed, I believe.
41

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1 JEFF ZYONTZ:

2 Now you're into your own parliamentary procedures.

4 COUNCIL PRESIDENT ANDREWS:

5 OK. I think one amendment to a motion, I believe, is allowed. So Mr. -- Vice President
6 Berliner, I take it, is -- well, why don't you lay out what your recommendation is?

8 COUNCIL VICE PRESIDENT BERLINER:

9 And I would. I would propose a substitute motion where there's a remand, and I would
10 specify -- I have a document in front of me, Mr. Zyontz. I don't know if that was something
11 that was prepared by you in terms of --

13 JEFF ZYONTZ:

14 It was prepared for me at the request of a Councilmember. I could pass that out.

16 COUNCIL VICE PRESIDENT BERLINER:

17 If you would, please. [PAUSE]

19 COUNCIL PRESIDENT ANDREWS:

20 Let me ask, is there a second to --

22 COUNCILMEMBER FLOREEN:

23 I second it.

25 COUNCIL PRESIDENT ANDREWS:

26 Seconded. Very good. Seconded by Councilmember Floreen. OK. I have a copy.

28 COUNCIL VICE PRESIDENT BERLINER:

29 So the document that has been shared with my colleagues, if you look at items 1-7 --

31 COUNCIL PRESIDENT ANDREWS:

32 Why don't you -- I think you should read it.

34 COUNCIL VICE PRESIDENT BERLINER:

35 That'd be fine. So we would remand on the basis of seeking additional evidence on the
36 following. "One, the economic performance of the current tenants in the shopping center.
37 Two, the economic viability of the center in light of larger, newer nearby centers. Three,
38 the effects on the environment of converting the property to residential use. Four,
39 proposed density, green space, open space, and recreational facilities. Five, the
40 compatibility of the proposed residential development with existing and proposed land
41 uses in the surrounding area. Six, school capacity for the proposed development. And



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1 seven, the public interest in approving the requested land use." So I believe, at the
2 request of one of my colleagues, that this is broad enough to ensure that all of the
3 relevant issues that were before the Hearing Examiner with respect to this matter are
4 properly reassessed. Does the Hearing Examiner have any view? Was that broad enough
5 to allow you to do your work in an appropriate manner?
6

7 FRANCOISE CARRIER:

8 The case -- if the case is remanded, it will again be taken up by Mr. Tierney, since he
9 conducted the original hearing. Mr. Zyontz did consult with me on the wording of this
10 remand order, and based -- I have reviewed Mr. Tierney's report, although I'm not, you
11 know, closely familiar with the record. It appears to me that this order would allow the
12 applicant to make changes that it felt might garner the Council's support. It would also
13 allow other interested parties to present evidence, as well as the applicant, in order to
14 create a more complete record. I think it would allow for a very complete review of the
15 issues.
16

17 COUNCIL VICE PRESIDENT BERLINER:

18 Thank you. And so I would make that motion.
19

20 COUNCIL PRESIDENT ANDREWS:

21 OK. That has been moved and seconded as a substitute motion. Is there any discussion
22 further? Councilmember Knapp is next, then Councilmember Leventhal. And,
23 Councilmember Elrich, I think you're after that.
24

25 COUNCILMEMBER KNAPP:

26 Thank you, Mr. President. More of a procedural question. I appreciate the motion that's
27 been made by both Councilmembers Elrich and Councilmember Berliner. If the Council is
28 to remand and then when it comes back before the Council, the Council is still free, upon
29 that remand, if it's not happy with what it sees, it can still deny the application.
30

31 JEFF ZYONTZ:

32 Absolutely.
33

34 COUNCILMEMBER KNAPP:

35 OK. All right. Thank you very much.

36 COUNCIL PRESIDENT ANDREWS:

37 OK. Thank you, Councilmember Knapp. Councilmember Leventhal.
38

39 COUNCILMEMBER LEVENTHAL:

40 Well, as I've served here over the years, and each year, better understand the
41 responsibilities of the position, I have appreciated more than I did when I got here. I made

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1 a joke some of my colleagues who served with me on the last Council will recall. I said,
2 you know, "I ran for the County Council. I didn't run for the District Council." And it takes
3 some time, I think, to understand the responsibilities of this position, and this is where we
4 sit in a quasi-judicial role, and we evaluate the evidence that is before us, and when, as
5 we did a couple of months ago, allow oral argument, we evaluate the case that is made by
6 those who present to us. And I take these one at a time, and I make my decisions based
7 on the facts presented to me, and it's not -- it's not like legislative debate, where I think all
8 of us are guided by strong feelings of principle and a desire for consistency. We sort of --
9 we make zoning decisions, we make legislative decisions, we make policy decisions in a
10 very macro way, and then when we're sitting as the District Council, we're really dealing in
11 a very micro way. We're really looking at the very specific facts and circumstances of a
12 very specific parcel which is proposed for rezoning. And I would just simply say that the
13 facts that were presented to my ear did not indicate to me that this particular parcel ought
14 to be changed from a retail use to a residential use. Much as I appreciate the legitimacy of
15 the owner of the property to use it as he sees fit, in fact the zoning map and the Master
16 Plan call for it to be retail use. And knowing what I know of the surrounding neighborhood,
17 it is one of the lower-income neighborhoods in Germantown, and there is a real need for
18 retail amenities that serve a pedestrian purpose, and that if this retail use were taken
19 away, the neighbors in the immediate vicinity would be inconvenienced, and that in fact
20 this village was designed to have this retail use in this specific location. So as I think about
21 -- so those -- so those were the conclusions that I came to, and that was why I agreed
22 with the initial motion not to go along with the Planning Board staff recommendation and
23 the Planning Board recommendation, and those facts still seem true to me now, and I
24 would be surprised if on remand new facts would be brought to me that would change my
25 view. Now, having said that, I don't see the harm in a remand. I mean, it's sort of kicking
26 the can down the road. It -- you know, if the property -- you know -- we allowed oral
27 argument in the first case because we thought it was fair for the neighbors to make their
28 case. I almost in every case allowed -- you know, voted to allow oral argument, even if I
29 was predisposed not to grant what the witnesses wanted. I think, you know, people really
30 want a chance to address the Council. Generally, I think they ought to have that chance.
31 In this case, you've got the property owner, who really wants another chance to make his
32 or her case to the Planning Board, and, you know, I suppose it's reasonable to do that. I
33 have to say I'm not sure what facts we're going to get that are going to be different when
34 you're talking about a retail amenity that is serving a very discrete purpose that was called
35 for in the Master Plan and that was called for in the initial zoning. So -- so I will go ahead
36 and vote with what appears to be a majority of my colleagues to remand, but I don't want
37 to give false hope to anyone here that -- any more than I would with oral argument. When
38 I raise my hand and vote for oral argument, that doesn't mean that I'm predisposed to
39 agree with what the people are asking us for, and if I vote for remand now, that should not
40 indicate to anyone that I've changed my mind on the basic facts here. If there are some
41 new facts that weren't brought to our attention before and the property owner believes that



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1 he can bring those to light, I don't see any harm in voting for that. So I'm willing to vote for
2 the remand, but I think the basic situation remains that this was an important retail
3 amenity in a community that needs a retail amenity. So, again, I don't want to hold out
4 false hope that if I vote for this motion that the ultimate outcome, from my perspective, is
5 going to be any different.

6
7 COUNCIL PRESIDENT ANDREWS:

8 OK. Councilmember Elrich, do you wish to speak? Because it doesn't show up on my
9 monitor here, but I saw your hand.

10
11 COUNCILMEMBER ELRICH:

12 Indeed. I'm not going to vote for the remand because -- for all the reasons I think George
13 stated very well. This is not a close case where the debate is, you know, some level of
14 density, and we're arguing over whether there should be additional 2 units per acre or 5
15 units per acre. This is really fundamental, and I agree -- I don't see this coming back any
16 differently. This is a fundamental retail use that serves the community that you described
17 very well. The removal of this use is a loss of use that's been, you know, called for in the
18 Master Plan. I just don't see why I want to revisit this again, because I will sure request an
19 oral argument the second time in front of us, and I don't believe the case is any different.
20 This -- this is not, in my mind, a close call, where we're arguing, you know... you know,
21 minor adjustments that would fix this. This is -- the proposal is a fundamentally --
22 fundamental change in use, and I don't support the fundamental change in use.

23
24 COUNCIL PRESIDENT ANDREWS:

25 Thank you, Councilmember Elrich. Councilmember Knapp, then Council Vice President
26 Berliner.

27
28 COUNCILMEMBER KNAPP:

29 Thank you, Mr. President. I'll be brief. No, I think the points that were raised by Mr.
30 Leventhal are fair, and those by Mr. Elrich. One of my reasons I'll be supportive of a
31 remand, though, I think is, there are a lot of situations that the cases are brought to us
32 where there are pieces that are brought along the way and issues are brought, I think, to
33 the applicant's attention. I think given the fact that the Planning staff, the Planning Board,
34 and the Hearing Examiner were all in unanimity as to their acceptance of this, I think the
35 fact that the Council then voted to deny showed that -- gave them kind of the first view
36 that, "Oh, wait. There might be something here that we hadn't considered." And so my
37 goal with a remand is to be very clear, and I think Mr. Leventhal said it very clearly. A
38 remand doesn't mean that the Council is, "Yay, go do something we're all going to be
39 happy about." I think it's an important to go -- it gives you a chance to go back, and they
40 have a chance to go back and take a look at it, recognizing what the Council's denial
41 initially -- or straw vote of a denial was, and there may be some new facts that come to



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1 light, there may be some new interactions with the community that provide something that
2 the community and the applicant may make more sense, but I think that's all -- all this is
3 doing is providing that opportunity, especially in light of the fact that up until the point it
4 came to the Council, everything else appeared to be moving in a positive direction. So I
5 think we've at least given the opportunity for folks to try to work something out, but I don't
6 think there's any illusion that says, "Hey, unless there's a pretty big shift, that whatever
7 comes back is going to get -- is going to get approval." So I appreciate the comments that
8 have been made, and I think it's always good to give the folks a chance to work it out.
9

10 COUNCIL PRESIDENT ANDREWS:

11 OK. Thank you, Councilmember Knapp. Council Vice President Berliner.
12

13 COUNCIL VICE PRESIDENT BERLINER:

14 My goal with respect to the motion was not to have the same matter brought back before
15 us. It was to allow the developer to understand what it was that this Council is concerned
16 about and give them an opportunity to work with the community to see if they can come
17 up with something different, something that could work. Now, it could be that, as my
18 colleagues have suggested, that there is no way, given your fundamental view with
19 respect to the significance of the existing shopping center, that you will be persuaded that
20 a revised proposal satisfies your thoughts with respect to what is necessary, but it seems
21 to me that there's no harm in giving the developer the opportunity to reconfigure this
22 project in a manner that perhaps could satisfy us. So it is on -- and in that spirit that I have
23 suggested that rather than just saying no at this point, to give them an opportunity to
24 refigure this in a manner that could win community support. So that's -- I believe that that
25 would be permitted under this remand. Am I correct with respect to that?
26

27 JEFF ZYONTZ:

28 Yes. It's absolutely permitted.
29

30 COUNCIL VICE PRESIDENT BERLINER:

31 And we've done that several times, on projects in my district and others, where we have
32 sent the clear message that, "I'm sorry. This is way too big. We're remanding it to you and
33 suggesting you come back with something else." And they have, and we have said to
34 ourselves, "OK. This works." And maybe that will happen here, and maybe it won't.
35

36 JEFF ZYONTZ:

37 I don't wish to interject myself in your debate, but I neglected to say in my opening that the
38 opponents to this did have an opportunity to comment on this. They opposed remand,
39 although one opponent wanted it to be widely open if you did remand.
40

41 COUNCIL VICE PRESIDENT BERLINER:

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1 Got it. Thank you.

2
3 COUNCIL PRESIDENT ANDREWS:

4 Thank you, Council Vice President. Thank you, Mr. Zyontz. Councilmember Elrich.

5
6 COUNCILMEMBER ELRICH:

7 I wish my colleagues would -- excuse me. I wish my colleagues would read the letter from
8 Holland & Knight. If you read the letter, you'll see that there's no intention to explore any
9 other use. The entire argument is based on the economic viability of the shopping center.
10 We don't have any expertise, and the citizens, for sure, don't have any expertise, that's
11 going to allow them to raise a challenge to whatever argument that the developer chooses
12 to construe as a reason why they shouldn't economically be required to continue the
13 center. This letter almost exclusively talks about the economic viability of the center. It
14 doesn't talk about, you know, other compatible uses. It doesn't indicate, in my mind, a
15 willingness to look at, you know, how the retail center might be reconfigured differently. It's
16 about why I shouldn't have to do a retail center, and give me the opportunity to enlarge on
17 that argument. And that's why I don't see this as being a very productive process. I mean,
18 if you're not going to -- I mean, the Council's arguments were not strictly on an economic
19 nature. They had to do with the relevance of the shopping center to the community, and if
20 we're simply going to say, give them another chance to make their economic argument
21 again -- and I will point out that this thing is almost verbatim taken from the Holland &
22 Knight letter. I mean, you're basically allowing them to construct their own arguments,
23 having a hearing on their terms, and the residents will still say you're taking away a retail
24 center that's in the Master Plan and crucial to our neighborhood. And they will just have
25 had more chance to make economic arguments. I really don't think that we're in a position
26 to rebut or evaluate those arguments. That's not what we do.

27
28 COUNCIL PRESIDENT ANDREWS:

29 OK. Thank you, Councilmember Elrich. I don't see any other -- I do see one.
30 Councilmember Knapp.

31
32 COUNCILMEMBER KNAPP:

33 I guess I would just say that it's coming back to us, and so we have already set the basis,
34 and we've already said what we don't like, and to the extent that they're going to make a
35 case back to us, we're going to either like it better, or we're not. And so I appreciate it, but
36 it's not as though someone -- if we let somebody pull a fast one on us, well, shame on us.
37 But, I mean, we can get the information, we can make the decision, and so I think it's
38 important for us to do that. One procedural question. If this is remanded, then it is still an
39 active zoning case, and there can be -- any communication is then still ex parte
40 communication. I just want to make sure, because we're having -- we have different
41 people participating, and there have been some questions along the way.

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1
2 JEFF ZYONTZ:

3 That's absolutely correct.
4

5 COUNCILMEMBER KNAPP:

6 I just wanted to make sure that was clear for everybody. Thank you.
7

8 COUNCIL PRESIDENT ANDREWS:

9 OK. And this is a good teaching moment. While we're on the subject of ex parte, Mr.
10 Zyontz, why don't you describe what that means?
11

12 JEFF ZYONTZ:

13 Ex parte communication is communication by one party out of the presence of the other.
14 In a zoning matter, what -- what you want to have is the ability of each party to refute or
15 support the statements made by others. So as a matter of law, the Council has barred
16 communication by a party to -- to the -- you, the decisionmaker.
17

18 COUNCIL PRESIDENT ANDREWS:

19 Outside of certain venues. Outside of the opportunity for simultaneous --
20

21 JEFF ZYONTZ:

22 Well, the record is made -- the record is made by the Hearing Examiner. Even your oral
23 argument must be on that record. If you wish to get something in the record, the means of
24 doing it is to open up the record or put it into the record.
25

26 COUNCIL VICE PRESIDENT BERLINER:

27 If I could, Mr. Zyontz, I believe it would be more accurate to say that we could not meet
28 with both parties simultaneously and hear them. We are bound by the record or formal
29 argument before us, and no conversation between us and our staffs with any party to this
30 proceeding is permissible. Is that correct?
31

32 JEFF ZYONTZ:

33 That is correct.
34

35 COUNCIL VICE PRESIDENT BERLINER:

36 And let's clarify on the staff piece -- I assume that that is also -- we've had some
37 conversations about that in the past, and I believe I would seek your guidance with
38 respect to that, as well.
39

40 JEFF ZYONTZ:

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1 You can communicate with staff on a procedural basis. Staff does not supply you with new
2 facts or information. It provides you with what your options are on doing what you want to
3 achieve.

4
5 COUNCIL VICE PRESIDENT BERLINER:

6 But there should not be any communications between anybody -- the parties to this case
7 and our staff. Is that -- is that a fair characterization, as well?

8
9 JEFF ZYONTZ:

10 You have a bill ongoing as to clarifying that situation. Right now, if the intent of the -- of
11 the communication with your staff is so that your staff then advise you of facts that should
12 be in record, our recommendation is you should not have that meeting.

13
14 COUNCIL VICE PRESIDENT BERLINER:

15 Thank you.

16
17 COUNCIL PRESIDENT ANDREWS:

18 Very good. Councilmember Leventhal.

19
20 COUNCILMEMBER LEVENTHAL:

21 Yeah. Who should not have that meeting? You said -- your recommendation is, you
22 should not have that meeting. You should not have a conversation -- Councilmembers
23 should not have a conversation with Councilmember's staff?

24
25 JEFF ZYONTZ:

26 No. The staff -- if the staff is invited outside of the Councilmember and the intent of the
27 party is to communicate facts that then would be communicated by the staff member to
28 the Councilmember, the staff member should not hold that meeting. Certainly, the
29 Councilmember should not hold any meetings on the subject of a -- of a zoning change.

30
31 COUNCIL VICE PRESIDENT BERLINER:

32 Mr. Zyontz, in administrative law, typically, the distinction on ex parte contact is procedural
33 versus substance. Is that something that you acknowledge? That is, that we -- our staff
34 could be called by a party to say, "This matter is being heard on X date," without any
35 conversation with respect to facts or the substance of the case. Those communications
36 typically -- although they're somewhat marginal in significance -- would presumably be
37 permissible, but there cannot be any, as you say, any conversation with respect to facts or
38 the substance of the case.

39
40 JEFF ZYONTZ:

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1 That's correct. I mean, certainly you can be reminded of -- of the calendar by your staff. I
2 don't see any problem with that.

3
4 FRANCOISE CARRIER:

5 Yeah. I agree. I think Mr. Berliner has made an important distinction. If -- a party may
6 discuss with a Councilmember or Council staffs procedural matters such as, "They've
7 scheduled this on a day when I'm going to be out of the country. Can you make them put it
8 on a day when I can be there?" What they can't do is have any discussion about the
9 merits of the case. If somebody wants to bring new facts, there's no way for them to do
10 that except going through the Hearing Examiner. If they want to argue about the facts that
11 are already in the record, tell you which ones are important, tell you which ones you
12 should be paying attention to, the only way to do that permissibly is through oral
13 argument. They can't do that outside of the hearing of the other parties.

14
15 JEFF ZYONTZ:

16 And it's facts or opinions, so the fact that XYZ civic association thinks one way or the
17 other, that is not something that can get to you outside of the record created by the
18 Hearing Examiner.

19
20 COUNCIL PRESIDENT ANDREWS:

21 What you just described is what I was trying to get at. You've explained it much better.
22 Has this been distilled into writing? Do we have a brochure?

23
24 JEFF ZYONTZ:

25 The Hearing Examiner does produce a pamphlet on this issue. The Council has that
26 available on its web site, as well.

27
28 COUNCIL PRESIDENT ANDREWS:

29 OK. All right.

30
31 JEFF ZYONTZ:

32 And we consult often on the topic.

33
34 COUNCIL PRESIDENT ANDREWS:

35 Very good. It's a good reminder whenever we have this opportunity, I think, because we
36 have new people involved, whether Councilmembers or the public on different cases, and
37 it's not necessarily intuitive. So thank you for the -- the update on that. All right. We'll go
38 back now, unless there are other comments on this, to any further discussion. Then we'll
39 vote on the motion. All right. Councilmember Floreen.

40
41 COUNCILMEMBER FLOREEN:

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1 Well, I just want to interject on the ex parte thing. Councilmember Trachtenberg tells me
2 that my bill on clearing this up is making its way through the -- through the committee, but
3 I really think it's important for us to be clear about this. Conversations about scheduling
4 can be tactical, as well. This is -- I've done this. Many of us are lawyers. We've litigated
5 these things. We've argued about these things. I think it's just better for us all collectively
6 to stay out of it. If there is an issue, have them -- any member of the public talk to Jeff or
7 the Hearing Examiner. On scheduling matters, all of this, it's just better, if we're going to
8 be honest about this in terms of our support to the community and all the members of the
9 community, to be clear about what we will do and what we shouldn't do. And because
10 there is confusion, I just urge everyone to -- to take that approach. We don't have that
11 many of these cases, and luckily, there really aren't deep problems, except we did have
12 that one matter, which very much troubled me. But I do think collectively, if we just had a
13 straight barrier to those conversations, it would be clear to everyone what the -- what the
14 rules of the game are. And I think that's very important for the credibility of the process,
15 and especially when there seems to be a change in direction, as this action appears to be.
16 It just keeps everybody apprised of how best to proceed. So I just wanted to make that
17 observation, and I look forward to getting this written down.

18
19 JEFF ZYONTZ:

20 One other observation. The Council, I think, knows that I intercept the mail when it deals
21 with -- with a zoning matter, and if it's ex parte, it doesn't go forward to you. And even in
22 the example in today's packet, the items that were in this packet were not sent to you
23 directly. They were waited till you had both the proposal from the applicant and the
24 opposition's response to that, and you had it in one packet, and I'll continue to do that and
25 continue to answer your calls on when there's a problem.

26
27 COUNCIL PRESIDENT ANDREWS:

28 OK. Thank you, Mr. Zyontz. Councilmember Elrich.

29
30 COUNCILMEMBER ELRICH:

31 I have some questions for the Hearing Examiner. First of all, does this remand limit what
32 arguments the community can make?

33
34 FRANCOISE CARRIER:

35 Not as long as they stay within the terms of the remand, which are quite broad. If there's
36 another issue that, Councilmember Elrich, you feel should be added, you know, that can
37 certainly be added to the remand. Based on my review of the record and the letters written
38 by community members, I believe that it -- all of the issues that community members have
39 been concerned about are included within the terms of the remand.

40
41 COUNCILMEMBER ELRICH:



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1 So they will be able to talk about, for example, the... the effect on the community of
2 converting the property to residential use?

3
4 FRANCOISE CARRIER:
5 Absolutely.

6
7 COUNCILMEMBER ELRICH:
8 And they will be able to talk -- they will be able to raise, which I think caused some
9 problem last time, the issue of how early a plan was made for conversion of this property
10 from retail use to residential use, as a matter of what that says about the intent of the
11 owner in acquisition and use of the property?

12
13 FRANCOISE CARRIER:
14 To the extent that it affects the public interest in -- in the Council's decision on this case,
15 they can certainly raise that. Whether that's directly relevant to the issues the Council has
16 to decide is something probably the Hearing Examiner would address in the first instance,
17 and then the Council can weigh in the final analysis.

18
19 COUNCILMEMBER ELRICH:
20 And since the Hearing Examiner heard this first and didn't find -- didn't make any of the
21 arguments that the Council ultimately made, does the Council's straw vote and the
22 remand based on Jeff's report -- does that weigh at all with the Hearing Examiner?

23
24 FRANCOISE CARRIER:
25 You know, I'm speaking a little bit out of school because this is not my case. I can tell you
26 that when I have had cases remanded, I certainly take very seriously the concerns that
27 Councilmembers raised. On the other hand, our job is to give you our analysis, and we
28 review the facts as we see them. We -- we are the triers of fact in the first instance. We're
29 going to tell you who we thought was credible, what evidence we feel came out of the
30 hearing. I... if it were me, and I suspect Mr. Tierney will do the same, you'd get my honest
31 opinion. I wouldn't just -- I would not be -- I would not feel I was doing my job if I gave you
32 what I thought you wanted to hear, as opposed to what I felt was the correct legal analysis
33 of the case. Mr. Tierney, in his report, acknowledged that, in his view, it was -- there were
34 -- there was definitely weighty evidence on both sides of this. He acknowledged that there
35 were legitimate public policy concerns here, public interest concerns, because of the
36 community's expressed interest in having this shopping center continue. In his view, you
37 know, he felt the scales tipped the other way. If he continues to feel that's the case, he'll
38 tell you that. I don't believe that he will try to guess what the Council wants to hear.

39
40 JEFF ZYONTZ:

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1 But he certainly knows and has been educated on those issues that are important to the
2 Council.

3
4 FRANCOISE CARRIER:

5 Yes.

6
7 JEFF ZYONTZ:

8 And this, in fact, says, you know, for the reasons discussed in the Council's deliberation is
9 the reason why it's remanded, so he'll pay attention to the issues.

10
11 FRANCOISE CARRIER:

12 I do think -- I do think if you remand the case, on the next go round, you will get a more
13 detailed review of the value of the shopping center to the community, its role in the
14 community -- whatever evidence comes in on that. I'm sure you'll get a pretty serious
15 review of it, because it's clearly a very significant issue in the case.

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1 COUNCILMEMBER ELRICH:

2 I guess you're not -- I'm still going to vote against this, but my concern remains that, I've
3 supported a couple of times postponing action and sending things back to communities for
4 discussion to work things out. And my colleague Mr. Berliner can remember a couple of
5 interesting occasions. But in those occasions, we had indications that the owner had
6 actually heard what we said and wanted to compromise. I will point out again that the
7 letter indicates that they didn't hear anything we said at the last meeting.

8
9 COUNCIL PRESIDENT ANDREWS:

10 Thank you, Councilmember Elrich. Council Vice President Berliner, then Councilmember
11 Leventhal.

12
13 COUNCIL VICE PRESIDENT BERLINER:

14 Just a couple of observations. One, I do believe -- as I recall our discussion of this matter,
15 that a number of my colleagues felt that it was extremely relevant that at the time of
16 purchase that there was evidence, as I believe is the case, at the time of purchase that
17 the owner had an intention to convert this to residential property. I believe that that was a
18 flashpoint for my colleague in particular, and I would seek to amend this to include explicit
19 discussion with respect to the evidence relating to the original intention of the owner and
20 its relevance to the decision of the Hearing Examiner and ourselves with respect to that
21 matter. I think that was -- that was a fair observation. I know a lot of my colleagues said,
22 "Gee, if -- did they buy this to basically have the shopping center go away, and then now
23 they've fulfilled that, and so now they go forward with their housing?" I think that that's a
24 fair issue that was raised, and we ought to understand it better. Also in conversation with
25 my colleagues, we've talked about the possibility of, why isn't mixed use, or is mixed use,
26 a possibility here -- that is, having a shopping center and residential? I'm sorry. We seem
27 to be doing that a lot these days, of having mixed use. Is that something that is even
28 feasible with respect to this?

29
30 FRANCOISE CARRIER:

31 If the Council wishes, it can direct the applicant to consider mixed use, and it will be up to
32 the applicant. You can't order them to do mixed use.

33
34 COUNCIL VICE PRESIDENT BERLINER:

35 Understood. Understood.

36
37 FRANCOISE CARRIER:

38 You can request that they consider it.

39
40 COUNCIL VICE PRESIDENT BERLINER:

41 I would so move to amend the resolution -- the resolution before us in that manner.

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1
2 COUNCIL PRESIDENT ANDREWS:

3 OK. Can we put that in writing, some specific language?
4

5 COUNCIL VICE PRESIDENT BERLINER:

6 Mr. Zyontz and the Hearing Examiner, can you help us here with respect to the -- there
7 you go. There you go.
8

9 COUNCIL PRESIDENT ANDREWS:

10 OK. While they're writing, I'll call on Mr. Leventhal, and we'll come back to that. Mr.
11 Leventhal.
12

13 COUNCILMEMBER LEVENTHAL:

14 My question related to the second point that Mr. Berliner raised, and I guess Ms. Carrier
15 has answered it. That is, the remand language that's before us for a vote now does not
16 preclude the property owner from reconfiguring the property owner's proposal.
17

18 FRANCOISE CARRIER:

19 That's correct. It explicitly permits it.
20

21 COUNCILMEMBER LEVENTHAL:

22 We could even go further, and I'm just repeating what I just heard. We could even go
23 further to open up the possibility of mixed retail and residential uses on the property as
24 something that would fall within the scope of this remand.
25

26 FRANCOISE CARRIER:

27 Yeah. I have just scribbled down a sentence that I think would achieve that. Shall I read it
28 to the Council? Is that appropriate?
29

30 COUNCIL PRESIDENT ANDREWS:

31 Yes. Go ahead.
32

33 FRANCOISE CARRIER:

34 I would put this at the end -- the very end of the resolution. The current final sentence
35 says, "The applicant may revise zoning application G-878 on remand to address concerns
36 about density, green space, open space, and recreational facilities or other elements of
37 compatibility." I would suggest an additional sentence, stating, "The applicant is requested
38 to consider the feasibility of a mixed retail/residential development on the subject site."
39

40 COUNCIL PRESIDENT ANDREWS:

41 OK. All right.

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1
2 COUNCIL VICE PRESIDENT BERLINER:

3 You got the other...

4
5 JEFF ZYONTZ:

6 I was writing the same phrase that she was writing, so we --

7
8 FRANCOISE CARRIER:

9 Oh. I thought you were writing the other one.

10
11 JEFF ZYONTZ:

12 It would be, "The relevance of..."

13
14 COUNCIL VICE PRESIDENT BERLINER:

15 Excuse me. Relevance -- pertaining to the relevance of the owner's original intention with
16 respect to the purchase of this property.

17
18 FRANCOISE CARRIER:

19 We don't need to use the word evidence because we're -- this will be on number 8, and
20 we've already got the sentence saying, "The parties may submit additional evidence on
21 the following..."

22
23 COUNCIL VICE PRESIDENT BERLINER:

24 I defer to you.

25
26 FRANCOISE CARRIER:

27 So without those couple of words.

28
29 JEFF ZYONTZ:

30 The relevance of the owner's initial intent?

31
32 COUNCIL VICE PRESIDENT BERLINER:

33 Yes.

34
35 FRANCOISE CARRIER:

36 How about "the owner's original intent in acquiring the property and the relevance of that
37 intent..."

38
39 COUNCIL VICE PRESIDENT BERLINER:

40 Thank you.

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1 FRANCOISE CARRIER:

2 "...to this application."
3

4 COUNCIL VICE PRESIDENT BERLINER:

5 That works.
6

7 COUNCIL PRESIDENT ANDREWS:

8 Mr. President.
9

10 COUNCIL PRESIDENT ANDREWS:

11 Yes. Mr. Leventhal.
12

13 COUNCILMEMBER LEVENTHAL:

14 All right. So I will vote for this motion to remand. I would not have suggested the detective
15 work about what was in the purchaser's mind when the purchaser bought the property, but
16 I won't object to it, and I'll vote for it. I think we need to be clear. A comment was made
17 earlier that there was a reversal. We're the County Council, and the Planning Board is an
18 independent agency, and the -- the property owner and the attorneys representing the
19 property owner are quite sophisticated about these processes, and I don't -- I wouldn't call
20 it a reversal. I mean, the Planning Board staff made its recommendation. The Planning
21 Board expects its staff to make independent recommendations based on its interpretation
22 of the facts. Then the Planning Board makes its own independent recommendation, and
23 then the County Council makes its own independent recommendation. We're not bound to
24 go along with what the Planning Board staff or the Planning Board or the Hearing
25 Examiner recommend. That's why we're all part of this process. So -- so -- nothing wrong
26 or inappropriate has occurred here. We're just following the process and asking the
27 questions that we're entitled to ask. Similarly, I don't think there's anything wrong with a
28 property owner making a purchase with the hope that the zoning might change in
29 response to an application to change the zoning, knowing full well that the zoning might
30 change or the zoning might not change. I mean, that's the -- you know, there's some
31 amount of risk, there's some amount of uncertainty, there's some amount of hope involved
32 in making a land purchase. There's no certainty, given, you know, the actors who have to
33 weigh in in the process. So although I will vote for this, I'm not sure what we will get to by
34 trying to discern what was in the mind of the purchaser. The purchaser has a right to
35 purchase property, the purchaser has a right to petition for a rezoning, and then the
36 agencies involved have our job to do, and either we grant the rezoning or we don't. So --
37 so I... you know, nobody has really violated the process at all here. We're just working our
38 way through the facts and trying to come to a conclusion that we're all comfortable with.
39

40 COUNCIL PRESIDENT ANDREWS:

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1 OK. I'm going to ask staff and the Hearing Examiner to just read the amended language
2 one more time before we have a vote.

3
4 JEFF ZYONTZ:

5 Just as a matter of grammar, number 7 should read, "The public interest is -- " No, 7
6 should read, "The public interest in improving the requested land use," instead of
7 "request." Number 8 is new. "The owner's original intent in purchasing the subject property
8 and the relevance of that intent to the rezoning application." Then at the bottom, after the
9 first sentence, is a new sentence:
10 "The applicant is requested to consider the feasibility of a mixed retail/residential
11 development on the subject site."

12
13 COUNCIL PRESIDENT ANDREWS:

14 OK. Is there acceptance of the amendment? I haven't heard any objection. OK. All right.
15 So the motion is amended in that way, and we are now ready to vote on the substitute
16 motion to remand as described. All those in favor, please raise your hand. And that is
17 Councilmember Trachtenberg, Councilmember Floreen, myself, Council Vice President
18 Berliner, Councilmember Knapp, Councilmember Ervin, and Councilmember Leventhal.
19 Opposed? Councilmember Elrich. And abstain, Councilmember Navarro, who was not
20 able to attend the oral hearing. So it is remanded 7-1, and thank you for your work on this
21 issue. And we are now going to be -- we're going to adjourn for the rest of the morning.
22 We have a 12:00 lunch meeting with the Board of Education in the fifth floor conference
23 room, then public hearings at 1:30, and tonight at 7:00 our first --

24
25 COUNCIL VICE PRESIDENT BERLINER:
26 7:00 or 7:30?

27
28 COUNCIL PRESIDENT ANDREWS:

29 7:00 tonight, our first public hearing. 7:00 tonight. 7:30 Thursday. 7:00 tonight, first public
30 hearing -- first night of public hearings on the Gaithersburg West Master Plan. We have
31 about 45 speakers.

32
33 COUNCILMEMBER KNAPP:

34 I may be a little late because it's Back to School Night for my youngest daughter, and so I
35 have to go to that first, and then I'll be here, but I shouldn't be too late. But I will have staff
36 in the audience, so I will be represented, but will be here as soon as I can after School
37 Night.

38
39 COUNCIL PRESIDENT ANDREWS:
40 Understand.

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1 COUNCILMEMBER KNAPP:
2 Thank you.
3
4 COUNCIL PRESIDENT ANDREWS:
5 Thank you.
6
7

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1

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1 COUNCIL PRESIDENT ANDREWS:

2 Good afternoon. We're back for our afternoon session, and we have several public
3 hearings before the County Council this afternoon. The first is a public hearing on
4 Expedited Bill 30-09, Personnel - Guaranteed Retirement Income Plan - Retirement
5 Savings Plan. This bill would permit certain non-represented public safety employees to
6 participate in the Guaranteed Retirement Income Plan, eliminate the distinction between
7 disability benefits for highly compensated employees and non-highly compensated
8 employees under the Retirement Savings Plan, establish default beneficiaries for
9 participants in the Retirement Savings Plan, and generally amend the retirement laws.
10 Persons wishing to submit additional material for the Council's consideration should do so
11 before the close of business Thursday, September 17, 2009. Action is tentatively
12 scheduled for Thursday, September -- actually, for September 22, which is a Tuesday,
13 2009, and if you are speaking, before beginning your presentation, please state your
14 name clearly for the record. We have one speaker for this hearing, and that's Mr. Joe
15 Adler, representing the County Executive. Good afternoon.

16
17 JOE ADLER:

18 Good afternoon, members of the Council. My name is Joe Adler, for the record, Director of
19 Human Resources. I am here on behalf of the County Executive, obviously, to ask you to
20 support Expedited Bill 30-09, which amends the Guaranteed Retirement Improvement --
21 Income Plan, rather, otherwise known as GRIP. And as you may recall, back in July 2009,
22 we had a collective bargaining negotiation with MCGEO, and this is how this plan came
23 about. At that point, it was approved by you for both MCGEO-represented employees as
24 well as non-represented employees, up until -- up to the level of management. And
25 through an oversight, there was a very small pension plan for public safety managers that
26 we inadvertently left out of the plan. There's about 7 folks in that particular plan, so it's a
27 very small cohort, and the plan basically makes some technical changes but allows that
28 group to come into the GRIP plan should they desire to do so.

29
30 COUNCIL PRESIDENT ANDREWS:

31 Thank you for your testimony, and we're scheduled to take this up next Tuesday. I don't
32 see any questions. Our next public hearing is a bill, public hearing Bill 31-09,
33 Administration - Consideration of Bills - One Subject, that would require bills enacted by
34 the Council to contain only one subject and generally amend the law governing legislative
35 sessions. Persons wishing to submit additional material for the Council's consideration
36 should do so before the close of business Thursday, September 17, 2009. A Management
37 and Fiscal Policy Committee worksession is tentatively scheduled for Monday, September
38 21, at 2:00. We have two speakers signed up for this public hearing. They are Jacques
39 Gelin, speaking as an individual, and Dwight Cramer, speaking as an individual, and I'd
40 ask them to join us at the front for the table here, and just note that at 2.5 minutes -- each
41 speaker has up to 3 minutes to speak. With 30 seconds to go, a yellow light will start

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1 flashing, and then a red light at the conclusion of 3 minutes, and if you're still speaking at
2 that time please wrap up. And there may be questions after your testimony. So, Mr. Gelin,
3 you are first. There's a button on the left in front of you -- far left. There you go.

4
5 JACQUES GELIN:

6 Good afternoon, Mr. President, members of the County Council. I'm Jacques Gelin. I live
7 in Rockville, and I'm here to urge you to support Bill 31-09 that requires all bills enacted by
8 this body to contain only one subject. Frankly, I'm somewhat embarrassed to even have to
9 request this, for the simple reason that I cannot for the life of me imagine a rational
10 argument why you should not adopt it unanimously. The state constitution, in Article 3,
11 Section 29, requires all laws enacted by the General Assembly to contain only one
12 subject. Your legislative attorneys advise you that it is unclear whether this constitutional
13 provision applies to laws enacted by a home-rule county exercising its legislative powers
14 under the County charter. This bill is designed to eliminate any ambiguity in this matter. As
15 the memorandum of the County Council President explains, "Limiting bills to one subject
16 provides accountability by ensuring a clean vote on an issue. In addition, bills with multiple
17 subjects may distort the legislative process by enabling subjects that would not pass on
18 their own to become law as a result of being subsumed in an omnibus bill." Simply stated,
19 this matter -- bill is a matter of good government. Enact it, and do so promptly. Thank you.

20
21 COUNCIL PRESIDENT ANDREWS:

22 Thank you, Mr. Gelin. Our next speaker will be Dwight Cramer. You might want to -- there
23 you go.

24
25 DWIGHT CRAMER:

26 I am Dwight Cramer of north Bethesda, a longtime resident of Montgomery County. When
27 I have been in the country -- 14 years I was overseas in foreign service -- I have always
28 been interested in the government of the County. I am a past president of Common Cause
29 of Maryland and currently serve on the board again. Common Cause, in this state and
30 nationally, supports such clean governmental processes as proposed in Bill 31-09, now
31 before the Council. I have informed the Common Cause board about this bill, but it has
32 not had the opportunity to read the bill nor the time to study it, so has not taken a position.
33 I am speaking for myself. Bill 31-09 would codify the practice of confining legislation to
34 one subject. This is a practice that should be lifted -- could be lifted from many textbooks
35 on good government that recommend this process to promote open and responsible
36 decisionmaking for legislative bodies. As has happened so many times in other governing
37 bodies, unrelated bills that could not pass in isolation because of the lack of broad support
38 and the fact that they represent a very narrow interest, are railroaded through using this
39 technique. This bill would lock the door on such processes before they happen. We saw
40 this year an egregious example of how the practice of tacking on unrelated riders to
41 legislation can prove detrimental when a bill to give the citizens of the District of Columbia

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1 the right to elect a voting representative to the House of Representatives for the first time
2 in history seemed close to success in Congress, when an unrelated amendment to repeal
3 most of city's gun laws was attached and suddenly put the whole proposal on indefinite
4 hold. Whatever your views on guns, this development muddled and confused the principal
5 legislation -- legislative issue at hand and led to the dishonest skirting of an historic
6 opportunity for Congress to solve this longstanding injustice. We should take as an
7 example the Maryland state constitution, which, in Article 2, Section 29, states, "Every law
8 enacted by the General Assembly shall embrace but one subject." This was no doubt
9 broadly considered before adoption and determined to be in the long- term interest of the
10 people of this state. We in this county should do the same.

11
12 COUNCIL PRESIDENT ANDREWS:

13 Thank you, Mr. Cramer, for your testimony. Very eloquent. There are no questions for
14 speakers. I would just like to note that in addition to Councilmember Elrich, who's listed as
15 a cosponsor, Council Vice President Berliner and Councilmember Ervin indicated when
16 the bill was introduced that they were cosponsoring the measure, and we'll make sure
17 that's meted onto the next printing of the bill. I thank them and would note that the practice
18 -- the Council does have a practice of limiting bills to one subject, but because it's not
19 required, it could change, and this would institutionalize the good-government practice
20 that the Council has long followed and already has in place for regulations. So we will
21 have -- the Management and Fiscal Policy Committee is scheduled to take this up next
22 Monday at 2:00, and I thank them for their attention to it, as well. Thank you all. That
23 concludes that public hearing, and our next public hearing is on Expedited Bill 32-09,
24 Taxation - Impact Taxes - Inflation Adjustment - Temporary Suspension. This bill would
25 temporarily suspend the requirement to adjust certain impact tax rates for inflation and
26 generally amend the law governing impact tax rates. Persons wishing to submit additional
27 material for the Council's consideration should do so before the close of business
28 Thursday, September 17, 2009. A Management and Fiscal Policy Committee worksession
29 is tentatively scheduled for Monday, September 21 at 2:00. We have one speaker signed
30 up for this measure, and that is Mr. Tom Farasy, representing the Maryland-National
31 Capital Building Industry Association. Nice to see you again, and you have three minutes.

32
33 TOM FARASY:

34 Thank you. Nice to be here. Good afternoon, Council President Andrews and
35 Councilmembers. My name is Tom Farasy, and I'm the 2009 president of the Maryland-
36 National Capital Building Industry Association, and we're here to support Bill 32-09, with
37 an amendment that I will discuss. The building industry has been a key component in this
38 county's economic engine. Unfortunately, the economic turmoil that has swept through the
39 nation has severely impacted the building industry in this County, and the County has
40 shared equally in the economic downturn, as evidenced in the record low number of



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1 building starts, real estate transactions, decline in unit production, and falling revenues.
2 We want to express our appreciation to Councilman Erlich for sponsoring --

3
4 COUNCILMEMBER ELRICH:
5 Elrich.

6
7 TOM FARASY:
8 Elrich. Sorry. Excuse me.

9
10 COUNCIL PRESIDENT ANDREWS:
11 Ha ha ha! It's a sore point.

12
13 TOM FARASY:
14 It's Freudian.

15
16 COUNCILMEMBER FLOREEN:
17 We know what you mean.

18
19 COUNCILMEMBER ELRICH:
20 How many times a day do I have to hear that?

21
22 COUNCILMEMBER FLOREEN:
23 It's OK.

24
25 TOM FARASY:
26 I don't know if I'm going to be able to recover. These are demanding times, and we
27 appreciate his leadership and foresight on this matter. Bill 32-09 recognizes the current
28 state of the building industry and that any increase in cost of doing business, no matter
29 the historical precedent, can add to further delays in job growth and the construction of
30 new homes. Bill 32-09 recognizes that the data that supports the July 1 7% increase is
31 separated from the reality that we have experienced since September of last year.
32 Construction prices are falling, and the demand for work is highly competitive.
33 Subcontractors are willing to aggressively cut their overhead and profit expectations in
34 order to obtain work. The proposal to suspend the 7% increase acknowledges that even
35 though there are signs of recovery, the recovery is fragile. There clearly is going to be an
36 18-24 month overhang before there is true recovery, and we measure true recovery by
37 having job growth. We believe that the two-year suspension can benefit the industry,
38 promote job growth, and be an extension that can benefit the County. We believe that the
39 proposal to provide the mandatory regulatory review of the cost in 2011 is a practical
40 solution that balances the temporary suspension. We ask that the Council support the bill
41 and that a provision be added that will provide a refund of the 7% increase in the event a

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1 building permit was issued that included the July 1 increase. I thank you for the
2 opportunity to provide our comments, and again, I apologize, Mr. Elrich, for that Freudian
3 slip.

4
5 COUNCIL PRESIDENT ANDREWS:
6 Thank you, Mr. Farasy.

7
8 TOM FARASY:
9 Thank you.

10
11 COUNCIL PRESIDENT ANDREWS:
12 Council Vice President Berliner has a question or a comment.

13
14 COUNCIL VICE PRESIDENT BERLINER:
15 Mr. Farasy -- did I pronounce your name correctly?

16
17 TOM FARASY:
18 You did. Thank you.

19
20 COUNCIL VICE PRESIDENT BERLINER:
21 What is your understanding -- when I met with representatives of your industry and had
22 conversations with the County Executive -- and this was many, many months ago, so part
23 of this is trying to refresh my memory... I was struck by, as your testimony reads, that
24 there are -- that there is this gap between the reality of what is happening in your industry
25 and the 7% increase that came about as a function of this formula. My question to you is,
26 what's the deal with the formula that could have brought about such a result, that we are
27 seeing a 7% inflation adjustment at a time when costs are going down? I had posed this
28 previously, and I -- I really do believe it's appropriate to have this on the record, and I
29 know we're going to go to worksessions, et cetera, but do you understand why it is --

30
31 TOM FARASY:
32 Yes, I do.

33
34 COUNCIL VICE PRESIDENT BERLINER:
35 OK. Could you explain it to us?

36
37 TOM FARASY:
38 The data index that was used was called the Engineering News Record. It's a record that
39 is published in -- at the current time, in 20 different metropolitan areas. It's currently not in
40 the Washington, DC, area, but the closest location is the city of Baltimore, and it
41 measures construction costs. And if you look at the city of Baltimore, Baltimore is

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1 characterized by high-rise, by brownfield development, all of whom conditions don't really
2 apply to the normal construction that occurs in Montgomery County, in the overall context,
3 and we feel that this index is not representative of the construction costs that are going on
4 in Montgomery County and metro Washington, but we also feel -- and we'll be happy to
5 talk about it further at the committee -- that there are other appropriate indices out there. I
6 would --

7
8 COUNCIL VICE PRESIDENT BERLINER:

9 Because that --

10
11 TOM FARASY:

12 I would like to make one other comment if I could.

13
14 COUNCIL VICE PRESIDENT BERLINER:

15 Sure.

16
17 TOM FARASY:

18 Because I have done, personally, some research work on this, because I would like to find
19 the golden index, whatever that is. And one of problems with all of these indices are that
20 they measure labor and material cost. They do not measure overhead and profit. So as a
21 subcontractor, when you bid, you make decisions as to how much to build in for your
22 overhead and profit, and I can tell you, it's a very common practice -- and I ask you, if you
23 don't believe me, talk to some of your constituents that are subcontractors -- very common
24 practice to build a job -- bid a job with no profit, and in some cases, cut by half or eliminate
25 the overhead. They just need to be out there in the marketplace.

26
27 COUNCIL VICE PRESIDENT BERLINER:

28 Need to employ their people.

29
30 TOM FARASY:

31 Yeah.

32
33 COUNCIL VICE PRESIDENT BERLINER:

34 All right. Because when my colleague and I had discussed this when I met with
35 representatives of your industry, my first instinct was, why shouldn't we just fix this index,
36 as opposed to create an aura in which we're giving a special break, if you will? I don't
37 perceive suspending this to be necessarily a special break. I perceive it to be reflective of
38 that this indices does not reflect the reality of our community. So if you could, I do look
39 forward to getting your thoughts with respect to alternative indices and what that would
40 have produced in this timeframe to give us a barometer as to the appropriateness of the
41 suspension versus coming up with a new index.

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1
2 TOM FARASY:
3 Correct Thank you.

4
5 COUNCIL VICE PRESIDENT BERLINER:
6 Thank you.

7
8 COUNCIL PRESIDENT ANDREWS:
9 Thank you, Council Vice President Berliner. Councilmember Elrich.

10
11 COUNCILMEMBER ELRICH:

12 I just wanted to hopefully clarify something Roger asked. One of my understandings is,
13 this is a lagging index, and that, you know, the inflation is in two years -- over a two-year
14 period, and we may quibble about what the index is, but it's likely that almost an index
15 would have shown inflation. But the fact is, the money is supposed to be used this year for
16 construction projects, and it may well be that the construction projects are going down in
17 cost, so we're -- we're trying to recapture inflation to cover what's normally the inflation
18 and construction costs, but hitting it in a year when construction costs are actually going
19 down. So it is truly out of synch. I mean, otherwise, if it weren't for this pretty anomalous
20 situation, we could debate which is the right index, but I'd assume that there normally
21 should be some kind of inflation adjustment. I think inflation adjustments are, as a rule,
22 good. We've just hit an anomaly, and I was trying to adjust for the anomaly.

23
24 COUNCIL VICE PRESIDENT BERLINER:

25 And I appreciate my colleague's intention with respect to it. It also called to mind as to
26 whether or not using a two-year index as opposed to a one-year index was appropriate. I
27 had been advised by the County Executive's people that they felt that a two-year index
28 was better because they felt that it absorbed -- it actually was a plus in the good years
29 even if it was a minus in the bad years, and my response to that was I'd be much more
30 interested in making sure that the bad years are not as bad as they can be, as opposed to
31 the good years being slightly less good. So if one has to make a choice with respect to a
32 two-year index that can create distortions, because in year one you might have 10%
33 inflation, and then the market falls in year two, and yet you're -- you don't actually capture
34 that at the time of recovery, I would be interested in your thoughts on that, as well.

35
36 TOM FARASY:

37 As you were talking, I was thinking, you know, in a -- this clearly, for me and for
38 everybody, is the most unusual experience that we have ever had. You know, my parents
39 went through, as your parents did, the Depression, and they know the impact of it, so
40 even though I've had three recessions in my business career, none of them has matched
41 this because there's always been an out. There's always been a source that somehow

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1 bailed things out, and there doesn't seem to be, so in such a dramatic decline, you know,
2 this technique that you described is even more hard felt, you know? If it were a, if you will,
3 a normal recession -- not that they're good, but if it were less dramatic, I think the impact
4 could be absorbed better. This time, the dramatic has been so significant that anything is
5 just -- it's troublesome. Beyond troublesome.

6
7 COUNCIL PRESIDENT ANDREWS:

8 Thank you, Council Vice President Berliner and Councilmember Elrich. Councilmember
9 Trachtenberg.

10
11 COUNCILMEMBER TRACHTENBERG:

12 Just a brief remark or reminder to colleagues that this item, this bill, is up for discussion in
13 the Management and Fiscal Policy Committee next Monday, so those that might have
14 some ideas about amendments or whatever, you know, I'd entertain them, and I know my
15 two colleagues would be interested in hearing from fellow Councilmembers, as well.

16
17 COUNCIL PRESIDENT ANDREWS:

18 Thank you, Councilmember Trachtenberg, and I don't see any other questions, so that
19 concludes this hearing. Thank you, Mr. Farasy.

20
21 TOM FARASY:

22 Thank you.

23
24 COUNCIL PRESIDENT ANDREWS:

25 Our next public hearing is on Zoning Text Amendment 09-06, Town Sector Zone -
26 Minimum Area. This amendment would allow, under certain circumstances, a reduction in
27 the land area required for land currently zoned Town Sector. Persons wishing to submit
28 additional material for the Council's consideration should do so before the close of
29 business Wednesday, September 16, 2009. A Planning, Housing, and Economic
30 Development Committee worksession is tentatively scheduled for Monday, September 21,
31 2009, at 2:00. We have two speakers signed up for this measure -- Greg Russ,
32 representing the Montgomery County Planning Board, and Bob Hydorn, representing the
33 Montgomery Village Foundation. Mr. Russ, you're first.

34
35 GREG RUSS:

36 Thank you, Councilman -- Council President Andrews. For the record, Greg Russ from
37 Montgomery County Planning Board. The Planning Board did review this text amendment
38 at its regular meeting last Thursday, September 10. The text amendment allows a Town
39 Sector Zone area to be reduced below the 1,500 acres only if accomplished by Sectional
40 Map Amendment. The board's key concerns with the ZTA are discussed in the attached
41 staff report that you have, but generally, the stated purpose of the ZTA appears to conflict

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1 with a provision of the Town Sector Zone that prohibits any application for reclassification
2 until 50 years after the grant of the Town Sector Zone. A corresponding revision to the
3 ZTA appears to be needed to avoid this problem. Also, the regulatory implications of a
4 code change that accommodates a reduction in the area classified in the Town Sector
5 Zone need to be carefully considered, since the maximum density, green area, open
6 space, right-of-way dedications, and other commitments of the original Churchill Town
7 Sector -- which, in this case, was the reason for the ZTA -- approval were based on a
8 minimum development area of 1,500 acres and in an approved a development plan. An
9 option to avoid the need for lengthy grandfathering may be to not reclassify undeveloped
10 Town Sector properties, which otherwise present different problems from grandfathering
11 developed properties. The board is also concerned with the impacts of the Text
12 Amendment on the Churchill Town Sector of the Sector Plan for the Germantown
13 Employment Area. The Planning Board recommendation retained the Town Sector Zone
14 within the Sector Planned areas of the town center, west end, and the western side of the
15 North End District in order to meet a central objective of the plan to create a vibrant town
16 center with an overall density of 2 F.A.R. from the from the MARC station on the west end
17 to the CCC -- CCT station at Aircraft Drive and Century Boulevard. The board found this
18 level of overall F.A.R. to be important, both to support the CCT and to provide the level of
19 activity necessary for the strong mixed-use center. The Planning Board determined that it
20 was possible to achieve both the density needed to make a vibrant town center and
21 provide the boost in density in the area because the TS Zone does not have an F.A.R.
22 limitation for nonresidential uses. It is even more flexible than the TX -- TMX-2 Zone. It is
23 in the right place to have the right effect, and its continued use does not raise any of the
24 issues associated with severing it from the rest of the TS Zone property in Germantown.
25 Thank you.

26
27 COUNCIL PRESIDENT ANDREWS:

28 Thank you, Mr. Russ. Mr. Hydorn.

29
30 BOB HYDORN:

31 Good afternoon. I'm Bob Hydorn, president of the Montgomery Village Foundation. Thank
32 you for the opportunity to be here this afternoon, and if I can make a personal comment --
33 this is nothing personal, OK? I broke the finger over the weekend. ZTA 09-06 makes
34 provision for a Sectional Map Amendment to reduce the area zoned Town Sector to less
35 than 1,500 acres. The ZTA is being proposed in order to facilitate development initiatives
36 in conjunction with the Germantown Master Plan. Although we have been assured and we
37 believe this amendment to TSZ is not intended to negatively impact Montgomery Village,
38 we have heard two very different versions of potential impacts. The Council staff and Park
39 and Planning staff do not agree on the impact ZTA 09-06 may have on Montgomery
40 Village. This heightens our concerns. We think allowing zoning -- rezoning of any of the
41 Town Sector prior to the 50-year mark from the date of its inception for Montgomery



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1 Village could have a negative impact on us. We are concerned that this would make it
2 possible for the owner of a parcel within Montgomery Village to facilitate rezoning of their
3 land in conjunction with the Gaithersburg East Master Plan update. We've asked the
4 County Council for clarification on this issue and have not yet received a response. We do
5 not want ZTA 09-06 to impact Montgomery Village, and since we have been told by
6 knowledgeable persons that it could, we ask that the door not be opened now for a zoning
7 change of the TS Zone. Thank you.

8
9 COUNCIL PRESIDENT ANDREWS:

10 Thank you, Mr. Hydorn. Our -- we have one question or comment from Councilmember
11 Knapp.

12
13 COUNCILMEMBER KNAPP:

14 Thank you, Mr. President. First, I would commend Greg for staying on the Planning
15 Board's message in spite of what the Council approved in a straw vote a month ago. I'm
16 glad to know that we're like a dog with a bone and aren't going to let that go away. That's
17 impressive. Nevertheless --

18
19 COUNCILMEMBER FLOREEN:

20 Consistency.

21
22 COUNCILMEMBER KNAPP:

23 Is key I suppose. Or the hobgoblins of -- well, whatever that turns out to be. But I would
24 also appreciate the comments of Mr. Hydorn. This came up a number of times during the
25 course of the Germantown Master Plan, and the Council staff understands the concerns
26 raised by Montgomery Village. I think the Councilmembers understand the concerns
27 raised by Montgomery Village, and what is going to be drafted is going to make sure that
28 those concerns are taken into account so that it will facilitate what needs to happen in
29 Germantown and not undermine what needs to occur in Montgomery Village. I think
30 everyone is aware of it, everyone understands, and I hope that in working with the
31 Planning Board, we can get them to the same page that the rest of us seem to be on.

32
33 COUNCIL PRESIDENT ANDREWS:

34 Thank you, Councilmember Knapp. No -- there are no other -- I don't see any other
35 questions or comments, so...

36
37 COUNCILMEMBER KNAPP:

38 Dare to dream.

39
40 COUNCIL PRESIDENT ANDREWS:

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1 That concludes the public hearing. Thank you very much. Our next public hearing is on a
2 special appropriation. This is Item 9 to the County government's FY09 operating budget,
3 Department of Police, for the amount of \$53,330 for the Byrne Justice Recovery Act
4 Grant. Action is scheduled immediately following this hearing. There are no speakers for
5 this hearing, so the hearing is closed. I'll describe this a little bit since it has gone directly
6 to the Council and did not go through the Public Safety Committee because I felt that it
7 was not necessary to do so. This is a grant for \$53,333 that would be used to restore a
8 crime analyst position that the Executive proposed eliminating and that the Council
9 accepted eliminating during the FY10 budget process. This cut was of concern because
10 crime analysis is a key function, a priority, of course, within the police department, and it
11 was reluctantly taken cut. This grant will allow us to hire a crime analyst for a year to
12 assist in this important function and so that is what the money would be used for. I will
13 make a motion in support of it.

14
15 COUNCIL VICE PRESIDENT BERLINER:
16 Second.

17
18 COUNCIL PRESIDENT ANDREWS:
19 Second by Council Vice President Berliner. Any discussion? Seeing none, all those in
20 favor of approving the special appropriation of \$53,330 for acceptance of FY09 Byrne
21 Justice Recovery Act Grant, please raise your hand. That is unanimous. That's approved,
22 9-0. Thank you. Our final public hearing this afternoon is on Expedited Bill 29-09, Bond
23 Authorization, that would authorize the County to issue certain bonds and authorize the
24 bonds and bonds previously authorized to be issued to be consolidated for sale and
25 issued, sold, and delivered as a single issue. Action is scheduled immediately following
26 this hearing, and this -- we have a combined packet for Items 10, 12, and 13. We'll have a
27 vote after we have the bill before us on final reading. And we do not have any speakers
28 for the hearing, so the hearing is closed. I will direct Councilmembers to the packet that
29 contains Agenda Items 10, 12, and 13, which summarizes what this would do. If any
30 Councilmember would care to comment -- I see Vice President Berliner has his light on,
31 so I'll turn to him.

32
33 COUNCIL VICE PRESIDENT BERLINER:
34 I would just like a little clarification as to the nature of the action we're taking, particularly
35 in the light of the conversation we had earlier today at lunch in which there was
36 considerable discussion with respect to the desirability of maximizing our use of bonds
37 during this particular moment in time, and I don't know what this does in relationship to
38 that. I see a number here, but I don't know a number in relationship to what and where
39 that puts us in terms of our bond capacity. So if you could be so kind as to explain a little
40 more as to the nature of the action we are taking and where that places us in terms of our

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1 bond capacity, I would be grateful, because there are many of us who are interested in
2 maximizing our use of our bond capacity at this moment in time or in the future.

3
4 COUNCIL PRESIDENT ANDREWS:

5 Great question. That question is directed to either Mike Faden, our senior legislative
6 attorney, or...

7
8 GLENN WYMAN:

9 Glenn Wyman with the Department of Finance.

10
11 COUNCIL VICE PRESIDENT BERLINER:

12 Mr. Wyman.

13
14 MIKE FADEN:

15 Who can actually answer it.

16
17 COUNCIL VICE PRESIDENT BERLINER:

18 That's good. That's even better.

19
20 GLENN WYMAN:

21 Actually, this process is something we go at it through every year in the Department of
22 Finance. Based on the new CIP that you pass in June, we go back and we try to
23 determine what portion of that CIP is going to be bond funded. Based on -- based on the
24 new bond amount that will eventually need to be issued at some point, we total that up,
25 and it's represented here in categories, and I think the total is like \$450 million.

26
27 MIKE FADEN:

28 453.9.

29
30 GLENN WYMAN:

31 453.9, but it doesn't necessarily have any relationship specifically to the amount of bonds
32 that we would issue in one particular year. That really falls more under the, you know,
33 Spending Affordability Guidelines and what the County can afford to issue.

34
35 COUNCIL VICE PRESIDENT BERLINER:

36 And giving you this authorization for \$458 million, what does that represent in terms of our
37 bond ceiling? And maybe the chair of the MFP Committee knows. Where does that put
38 us?

39
40 GLENN WYMAN:



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1 It's actually cumulative. Like I said, each year, we'll go through the CIP and try to
2 determine what new projects are going to be completed -- not necessarily in that year, but
3 cumulatively, going forward.

4
5 COUNCIL VICE PRESIDENT BERLINER:

6 OK. So it has no relationship, really, to the larger issue that my colleagues and I will be
7 grappling with, with respect to what our -- what the use of our bond capacity should be?

8
9 GLENN WYMAN:

10 That's right.

11
12 COUNCIL VICE PRESIDENT BERLINER:

13 OK. Thank you.

14
15 GLENN WYMAN:

16 You're welcome. And it does one other thing, too. It also consolidates the authority so that
17 the various categories can be issued as one issue.

18
19 COUNCIL VICE PRESIDENT BERLINER:

20 I do understand has some efficiencies, and that's appropriate. Thank you. I just wanted to
21 make sure that we weren't taking any action here that would in any way inhibit our ability
22 to look at this issue of the use of our bond capacity. Thank you.

23
24 COUNCIL PRESIDENT ANDREWS:

25 OK. Thank you, Council Vice President. Councilmember Knapp.

26
27 COUNCILMEMBER KNAPP:

28 And just to follow up on that, and as a result of our going to market or having authorization
29 for this issuance, this is generally what triggers our need to then go before the bond rating
30 agencies and get some sense as to what our "bond-ability" is.

31
32 GLENN WYMAN:

33 That's a complicated question. We know, at this point in time, approximately what we're
34 going to issue in terms of General Obligation bonds, based on information through the
35 Spending Affordability process and also what we've spent retroactively.

36
37 COUNCILMEMBER KNAPP:

38 Right. But I mean, from a rating agency's perspective, though, we actually have to go
39 meet with all of them and get some sense as to, are we still AAA? Do they have other
40 concerns? Are we AAA good outlook, negative outlook, whatever? But that's what --



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1 because we didn't -- usually that trip happens in the spring, and this was pushed off till the
2 fall because we weren't going to issue any bonds in the spring.

3
4 GLENN WYMAN:

5 That's correct. This process will happen as it does in the past. They won't focus on the
6 fact that there is another 453 million issued in bonds. They're going to look --

7
8 COUNCILMEMBER KNAPP:

9 No, no, not on that so much as just the fact that this is what triggers that process, so we
10 actually understand what we're rated to be.

11
12 GLENN WYMAN:

13 Oh, I see what you're saying.

14
15 COUNCILMEMBER KNAPP:

16 So that when those bonds go to -- are for sale, then people know what they're rated.

17
18 GLENN WYMAN:

19 This process happens every -- it starts in the summer after the CIP has been approved.

20
21 COUNCILMEMBER KNAPP:

22 Right.

23
24 GLENN WYMAN:

25 Comes over to you usually in the late summer or in the fall, depending on the recess, but
26 no, it doesn't trigger the bond sale. What triggers the bond sale is typically setting a date
27 that we're actually going to sell bonds.

28
29 COUNCIL VICE PRESIDENT BERLINER:

30 Mr. Wyman, we did hear from our Superintendent of Schools that this was about the most
31 attractive bond market in his experience of 34 years as a superintendent, and that's sort of
32 important, hearing from the Superintendent of Schools, but I'd be more confident if I heard
33 from our finance people that they share that assessment. Is this a uniquely attractive time
34 for bonds?

35
36 GLENN WYMAN:

37 If you're asking my personal opinion, yeah. Interest rates are certainly low. I think there's a
38 real move -- probably the director has mentioned this before. There's a real -- a move or a
39 flight to quality. I think people are discovering municipal bonds, while traditionally a
40 smaller market than taxable bonds, but they represent a really good value because they
41 are very safe. So I think it is strong market. Again, it still begs the question, you know, at

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1 what level can you afford to issue debt? And again, that goes back to Spending
2 Affordability process. But to answer your question, yeah, it is -- municipal bonds are
3 expensive, which means that the yields on them are low.

4
5 COUNCIL VICE PRESIDENT BERLINER:
6 Thank you.

7
8 COUNCIL PRESIDENT ANDREWS:
9 OK. Thank you. Councilmember Trachtenberg.

10
11 COUNCILMEMBER TRACHTENBERG:
12 Thank you, President Andrews. Well, our bond rating trip is coming up. It's going to
13 actually occur on October 9, and so this is rather timely to have this voted on. And to
14 answer your questions, Mr. Vice President -- Roger -- you know, this is very much a
15 housekeeping measure, and there is regular communication with the rating agencies, so I
16 think the response to Councilmember Knapp's question was a good one. And, you know,
17 what I would just suggest is that the statements that were made earlier in our meeting with
18 the Board of Ed were very much on point. You know, it's my understanding from
19 colleagues at the Finance Department, but really from the rating agencies themselves,
20 that this is really very much an optimal time to float bonds. And, you know, the County is
21 in a very strong position to be competitive around rates that are offered. So it's something
22 to think about, and certainly I think it's going to be raised in discussion when we're up at
23 the agencies on October 9. There will probably be some discussion about long-term
24 investments and what those investments look like in terms of the CIP.

25
26 COUNCIL PRESIDENT ANDREWS:
27 OK. Thank you, Councilmember Trachtenberg, for that description and explanation. All
28 right. I'm looking at Items 10, 12, and 13 on the agenda, and I'm trying to determine
29 whether we need to have separate votes or not, and I'm seeing a nod that we need two
30 different votes. Right?

31
32 MIKE FADEN:
33 You need a roll call on the bill.

34
35 COUNCIL PRESIDENT ANDREWS:
36 A roll call on 12, on the bill, and then a majority on the consolidation -- on the action. OK.

37
38 COUNCILMEMBER FLOREEN:
39 I'll move approval. Do you need a motion?

40
41 COUNCIL PRESIDENT ANDREWS:



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1 Let's see. Yeah, I think so. All right. So --
2
3 COUNCILMEMBER TRACHTENBERG:
4 I think you do a motion. Second it.
5
6 COUNCIL PRESIDENT ANDREWS:
7 All right. So moved. Expedited Bill 29-09 is moved by Councilmember Floreen and
8 seconded by Councilmember Trachtenberg. It requires 6 votes. It is a roll call. Will the
9 clerk please call the roll?
10
11 CRYSTAL BROCKINGTON:
12 Miss Navarro.
13
14 COUNCILMEMBER NAVARRO:
15 Yes.
16
17 CRYSTAL BROCKINGTON:
18 Mr. Elrich.
19
20 COUNCILMEMBER ELRICH:
21 Yes.
22
23 CRYSTAL BROCKINGTON:
24 Miss Trachtenberg.
25
26 COUNCILMEMBER TRACHTENBERG:
27 Yes.
28
29 CRYSTAL BROCKINGTON:
30 Miss Floreen.
31
32 COUNCILMEMBER FLOREEN:
33 Yes.
34
35 CRYSTAL BROCKINGTON:
36 Mr. Leventhal.
37
38 COUNCILMEMBER LEVENTHAL:
39 Yes.
40
41 CRYSTAL BROCKINGTON:

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1 Miss Ervin.

2
3 COUNCILMEMBER ERVIN:

4 Yes.

5
6 CRYSTAL BROCKINGTON:

7 Mr. Knapp.

8
9 COUNCILMEMBER KNAPP:

10 Yes.

11
12 CRYSTAL BROCKINGTON:

13 Mr. Berliner.

14
15 COUNCIL VICE PRESIDENT BERLINER:

16 Yes.

17
18 CRYSTAL BROCKINGTON:

19 Mr. Andrews.

20
21 COUNCIL PRESIDENT ANDREWS:

22 Yes. Expedited Bill 29-09 is unanimously approved, 9-0. All right. Now, Item 13 is action
23 on a resolution to consolidate previously authorized notes for sale and issuance as a
24 single issue. It requires a majority of Councilmembers.

25
26 COUNCILMEMBER FLOREEN:

27 So moved.

28
29 COUNCIL PRESIDENT ANDREWS:

30 It's moved by Councilmember Floreen.

31
32 COUNCILMEMBER ERVIN:

33 Second.

34
35 COUNCIL PRESIDENT ANDREWS:

36 Seconded by Councilmember Ervin. Any discussion? Seeing none, all those in favor of
37 this resolution, please raise your hand. And that is unanimous, 9-0. Very good. All right. I
38 think we're now ready to move on to the District Council session. Item 14 was deferred.
39 Item 15 is action on Zoning Text Amendment 09-04, Rural Neighborhood Cluster Zones -
40 Equestrian Facilities. The PHED committee is recommending approval. I'll turn to the chair
41 of the PHED Committee, Councilmember Knapp.

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1
2 COUNCILMEMBER KNAPP:

3 Thank you.
4

5 MIKE FADEN:

6 Excuse me. Mr. President.
7

8 COUNCIL PRESIDENT ANDREWS:

9 Yes.
10

11 MIKE FADEN:

12 Did you do Item 11, introduction of the bill?
13

14 COUNCIL PRESIDENT ANDREWS:

15 You know what? You're right. We have to go back and do that, so... Correct. Let's go
16 back first and -- go back out of District Council session temporarily, go back to introduction
17 of bills, legislative session. It's Bill 33-09, Inspector General - Attorney, sponsored by
18 Councilmember Ervin and myself and Councilmembers Navarro, Floreen, and Knapp.
19 Public hearing is scheduled for October 6 at 1:30 P.M. I'll see if there are any comments
20 about the measure. Not at this time. OK. So a public hearing will be scheduled for October
21 6 on Bill 33-09 at 1:30, and without opposition, the bill is introduced. All right. Back to the
22 District Council session. Thank you, Mr. Faden, for the catch. Item 15 is Zoning Text
23 Amendment 09-04, Rural Neighborhood Cluster Zones - Equestrian Facilities. The PHED
24 Committee recommends approval. Councilmember Knapp.
25

26 COUNCILMEMBER KNAPP:

27 Thank you, Mr. President. This is fairly straightforward. We have a series of rural zones in
28 which agricultural activities can be conducted. This ZTA proposes to amend that Rural
29 Neighborhood Cluster Zone to allow lots or parcels larger than 2 acres to board and raise
30 one horse per acre. No more than five horses would be allowed on sites larger than 5
31 acres, and anything more than 5 horses would require a special exception. Interestingly,
32 on these parcels, you are allowed to do agriculture, you are allowed to have all other
33 types of agricultural animals, but because of some legacy legislation, horses were a
34 required special exception. So all this does is try to make our agricultural definitions
35 consistent and provide some guidance as to how horses can be used in the RNC Zone,
36 and so that's really what it does. So it allows -- as I just explained to you, how many can
37 be used per certain acres, and this doesn't require a special exception for people to own
38 horses in addition to animals on those properties.
39

40 COUNCIL PRESIDENT ANDREWS:

41 OK. And so I see the vote was 3-0, so you've got the horses in a row.

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1
2 COUNCILMEMBER KNAPP:

3 We got the horses in a row.
4

5 COUNCIL VICE PRESIDENT BERLINER:

6 Nobody is going to vote "neigh."
7

8 COUNCIL VICE PRESIDENT BERLINER:

9 Oof. Boy. How I've missed all of you these last five or six weeks.
10

11 JEFF ZYONTZ:

12 If I may, Mr. President, if the Council does adopt this, I'll of course put an opinion section
13 that conforms to your opinion.
14

15 COUNCILMEMBER KNAPP:

16 And the hits keep coming.
17

18 COUNCIL VICE PRESIDENT BERLINER:

19 We'd better get out of here.
20

21 COUNCIL PRESIDENT ANDREWS:

22 All right. All right. All those in the saddle. OK. Requires 5 votes. This is a roll call, so will
23 the clerk please call the roll?
24

25 CRYSTAL BROCKINGTON:

26 Miss Navarro.
27

28 COUNCILMEMBER NAVARRO:

29 Yes.
30

31 CRYSTAL BROCKINGTON:

32 Mr. Elrich.
33

34 COUNCILMEMBER ELRICH:

35 Yes.
36

37 CRYSTAL BROCKINGTON:

38 Miss Trachtenberg.
39

40 COUNCILMEMBER TRACHTENBERG:

41 Yes.

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1
2 CRYSTAL BROCKINGTON:
3 Miss Floreen.
4
5 COUNCILMEMBER FLOREEN:
6 Yes.
7
8 CRYSTAL BROCKINGTON:
9 Mr. Leventhal.
10
11 COUNCILMEMBER LEVENTHAL:
12 Yes.
13
14 CRYSTAL BROCKINGTON:
15 Miss Ervin.
16
17 COUNCILMEMBER ERVIN:
18 Yes.
19
20 CRYSTAL BROCKINGTON:
21 Mr. Knapp.
22
23 COUNCILMEMBER KNAPP:
24 Yes.
25
26 CRYSTAL BROCKINGTON:
27 Mr. Berliner.
28
29 COUNCIL VICE PRESIDENT BERLINER:
30 Yes.
31
32 CRYSTAL BROCKINGTON:
33 Mr. Andrews.
34
35 COUNCIL PRESIDENT ANDREWS:
36 Yes. Zoning Text Amendment 09-04 is approved, 9-0.
37
38 COUNCILMEMBER TRACHTENBERG:
39 Yippee.
40
41 COUNCIL VICE PRESIDENT BERLINER:

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1 Yippee-ki-ay.

2
3 COUNCIL PRESIDENT ANDREWS:

4 All right. And our final item for this afternoon before we adjourn and then have the public
5 hearing this evening at 7:00 is Item 16, which is Reconsideration /Amendment/Readoption
6 of Development Plan Amendment 09-01 for the purpose including exhibit references in the
7 approval resolution. I understand that this could not -- could not be done by staff. It
8 required a vote, although essentially it's housekeeping.

9
10 COUNCILMEMBER KNAPP:

11 So we need to have a motion for reconsideration. Do we?

12
13 COUNCIL PRESIDENT ANDREWS:

14 We do.

15
16 COUNCILMEMBER KNAPP:

17 OK, Mr. President, I would recommend reconsideration.

18
19 COUNCIL PRESIDENT ANDREWS:

20 All right. OK. Moved by Councilmember Knapp, seconded by Councilmember Ervin to
21 reconsider DPA 09-01. All in favor of reconsideration, please raise your hand. That is
22 unanimous in favor of reconsideration. All right. And then, we have before us the re-
23 amended resolution, correct? All right. Mr. Zyontz, can you just describe very briefly --

24
25 JEFF ZYONTZ:

26 The only thing -- on circle page 3, the additional words are underlined -- essentially, some
27 exhibits were not referenced in what you had previously passed and are now
28 reconsidering. This would simply include those -- those exhibits.

29
30 COUNCIL PRESIDENT ANDREWS:

31 OK. All right. I don't see any questions.

32
33 COUNCILMEMBER FLOREEN:

34 Move approval.

35
36 COUNCIL PRESIDENT ANDREWS:

37 Move approval by Councilmember Floreen.

38
39 COUNCIL VICE PRESIDENT BERLINER:

40 Second.

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- 1 COUNCIL PRESIDENT ANDREWS:
- 2 Seconded by Council Vice President Berliner. All those in favor, please raise your hand.
- 3 That is approved, 9-0, on reconsideration. Thank you. All right. Council is adjourned until
- 4 7:00 tonight for a public hearing. 7:00.
- 5
- 6 COUNCIL VICE PRESIDENT BERLINER:
- 7 When are we going to get out?
- 8